

# EXHIBIT C

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF GEORGIA,

Defendant.

Civil Action File No. 1:16-CV-03088-ELR

**FULTON COUNTY SCHOOL DISTRICT’S OBJECTIONS AND  
RESPONSES TO UNITED STATES OF AMERICA’S SUBPOENA TO  
PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO  
PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION TO NON-  
PARTY**

The Fulton County School District (“FCSD”) serves the following objections to the United States of America’s Subpoenas to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action, for Centennial High School, Hamilton E. Holmes Elementary School, Haynes Bridge Middle School, and Tri-Cities High School (collectively, the “Sites”), previously emailed to the undersigned counsel on December 17, 2021 (the “Subpoenas”).

FCSD objects to the Subpoenas because they are not proportional to the needs of the case, attempt to impose obligations greater than those under the Federal Rules

of Civil Procedure, and seek to gather information or collect evidence that is not relevant to any issue in the above-styled litigation.

FCSD objects to the U.S.A. unilaterally designating the time and place of the inspection, without conferring with counsel for FCSD. The undersigned counsel anticipates being on paternity during the first half of January 2022, including January 13 and 14. FCSD is willing to make the Sites available for reasonable inspection at a mutually convenient time during the week of January 24, 2022 or at a later time.

FCSD further objects to the terms set forth in Attachment A as follows:

***General Health and Safety Precautions***

In an effort to limit the number of personnel in any given facility at one time, the United States intends to conduct inspections of the identified premises in two separate teams. One team will inspect the premises on the first date identified in the subpoena and the second team will inspect the premises on the second date identified in the subpoena. Each team will consist of a maximum of two DOJ employees and two experts, and DOJ will provide the names of the members of the visiting teams one week in advance of the site visit. All DOJ team members have been fully vaccinated against COVID-19 and will wear masks during the entirety of the visit, regardless of whether the underlying facility operates under a mask mandate. Team members will abide by any sign-in policies and procedures regularly applied to

visitors to the premises. The United States requests that either the regional GNETS program director or another GNETS site-based administrator accompany each team during the entirety of the inspection of the identified premises. In the event a student has a crisis or any other urgent school-based situation arises, members of the team will immediately follow the regional GNETS program director or GNETS site-based administrator's instructions for responding to the crisis/situation.

**RESPONSE:**

**1) FCSD objects to any multi-day inspections of the Sites. A multi-day inspection would be unduly disruptive to school operations. Any inspection of a Site must occur within a single school day.**

**2) FCSD objects to more than one expert and one attorney being present at a Site on behalf of the U.S.A.**

**3) FCSD objects to the inspection of more than four GNETS classrooms at a Site, as determined by the site-based administrator or other FCSD representative.**

***Experts***

The purpose of these site visits is to allow the United States' experts an opportunity to access the information they need to form opinions in the matter of United States v. Georgia, No. 16 Civ. 3088 (N.D. Ga.). Each of the United States'

experts (Jeff Anderson, Mary Jo Dare, Amy McCart, and Melinda Mitchiner) specializes in the field of special education and has extensive experience touring educational facilities, observing classroom instruction, and assessing student engagement in a manner that minimizes disruption to school operations. As stated above, the names of the specific experts and DOJ personnel whom the United States expects to be in attendance during the site visit will be provided one week in advance of the visit.

### *Timing*

While this subpoena identifies an 8-hour time range for inspection on account of yet-to-be-determined start and end times, the total length of a single team's inspection of the premises identified shall not exceed 3.5 hours. In most cases—particularly in facilities where there are smaller numbers of students in the GNETS program—the length of the site visit will be significantly shorter. So long as total inspection time for a single team does not exceed 3.5 hours, the experts' time spent on any particular aspect of the site visit shall not be limited. In advance of the visit, the United States will work with counsel to identify more specific arrival and departure times that do not interrupt the start or dismissal of school.

**RESPONSE:**

**4) FCSD objects to the U.S.A. retaining unfettered discretion as to the length of each classroom visit. To minimize disruption, FCSD is willing to make a classroom available for inspection for up to fifteen (15) minutes. Any tour of non-classroom facilities shall be limited to forty-five (45) minutes total.**

***Physical Inspection***

Each site visit team will tour the premises and have the opportunity to inspect the following areas:

- Any classrooms that serve any student enrolled in the regional GNETS program (regardless of whether the classroom is a dedicated GNETS classroom or general education classroom where a student in the GNETS program spends a portion of the day);
- Any classrooms or other areas linked to “specials,” “connections,” or “electives” (e.g., art, music, theatre, band, career tech);
- Media center/Library;
- Gymnasium;
- Cafeteria;
- Science Labs;
- Computer Labs;
- Playground/Outdoor Athletic Facilities;
- Sensory Rooms and/or De-escalation Rooms;
- Any rooms that are used to provide therapeutic services, whether to students in the GNETS programs or to students with or without disabilities in the general education school;
- Counseling Office/Center;
- Nurse’s Office/Station;

- Storage rooms/closets within GNETS school-based classrooms or standalone GNETS centers; and
- Any other area of the premises accessed or utilized by students in the GNETS program not specifically identified above.

The experts on each team shall be permitted to ask questions of the GNETS director or site-based administrator that are incidental to the inspection of the premises. This includes questions about the specific use(s) of particular rooms or areas of the building, the extent to which GNETS students are permitted to use those rooms or areas of the building, basic facts regarding the nature of any classrooms entered and/or observed (e.g., the grade level(s) of the classroom, subject matter, etc.), whether classroom attendance that day reflects actual enrollment, the job title of school staff interacting with students, and, generally, what students are working on. To minimize disruptions to classroom instruction, the experts shall refrain from asking such questions inside of individual classrooms where instruction is occurring.

**RESPONSE:**

**5) FCSD objects to any inspection of a general education classroom. Such inspections would be unduly disruptive to school operations and have no relevance to any issue in the litigation.**

**6) FCSD objects to any attempt to inspect administrative offices or facilities not generally accessible by students.**

**7) FCSD objects to any questioning of any FCSD official, Site employee, or GNETS representative during the inspection. Rule 45 does not authorize such questioning or interrogations. Accordingly, FCSD reserves the right not to answer any question asked during the Site inspection.**

### ***Classroom Observations***

Each team inspecting the identified premises will have the opportunity to observe classroom instruction or any other activity taking place in all GNETS classrooms and any general education classroom that serves a student in the GNETS program (“qualifying classrooms”). The two experts on each team and one DOJ employee shall have the right to enter each qualifying classroom to conduct observations. The experts shall make all reasonable efforts to stand and/or sit in the area of the classroom least likely to cause disruption. In most cases, this area will be the back of the classroom. Experts shall have reasonable leeway to adjust their position within the classroom where needed to observe what students are working on and students’ level of engagement. The duration of the classroom visit will be determined by the experts. If requested, the experts shall be permitted to return to a classroom already observed for additional observation. Additionally, experts shall



be permitted to observe—either from a stationary position in a classroom or in a hallway—periods of transition where students in the GNETS program move to and from classrooms or other areas of the school facility.

At no time during the observation will the experts question or otherwise engage students or classroom personnel beyond exchanging common pleasantries (e.g., responding to a “hello,” saying “thank you” or smiling). In the event classroom personnel or students speak to the experts unprompted, the experts will minimize communication by responding with a nod or by saying “thank you” or “okay.”

**RESPONSE:**

**8) FCSD objects to any attempt to re-observe a classroom. Repeat observations would be unduly disruptive to school operations.**

**9) FCSD objects to any observer moving about the classroom during a classroom inspection. The inspections are programmatic observations—not evaluations of individual students. Moving about the classroom would be unduly disruptive to classroom instruction and is not proportional to the needs of the case. FCSD will permit the observer to remain positioned at the back of the classroom during the inspection.**

**10) FCSD objects to any attempt to observe or follow students as they transition from a GNETS classroom to a non-GNETS classroom or other**

**setting. Such observations could be unduly disruptive and harassing to the student in question.**

***Expert and Team Member Documentation***

The experts participating in the inspection of the premises shall have the right to document the nature, condition, and appearance of the premises via photographs so long as the photographs taken do not include students, parents/guardians, building personnel, or any other images that implicate the Family Educational Rights and Privacy Act. No other limitations shall be placed on the experts' right to photograph the premises.

All members of the DOJ team, including experts, participating in the inspection of the premises shall have the right to document any part of the inspection by taking notes. No restrictions shall be placed on this right.

**RESPONSE:**

**11) FCSD objects to any photographs being taken of any student, or of anything containing a student's name or other personally identifiable information. Such information is not proportional to the needs of the case and would unduly invade the privacy interests and confidentiality of FCSD students.**

12) FCSD objects to any photographs being taken of the premises, unless: (i) the U.S.A.'s representative(s) specifically advises FCSD's attorney of the specific photograph being taken in advance, such that FCSD has its own opportunity to take its own photograph contemporaneously; and (ii) the U.S.A. provides FCSD with electronic photographs of all photographs taken, with metadata fully intact, within thirty (30) days of the inspection.

13) FCSD objects to any representative of the U.S.A. taking any notes containing the name or other personally identifiable information of FCSD students. Such information is not proportional to the needs of the case and would unduly invade the privacy interests and confidentiality of FCSD students.

In a good-faith effort to resolve these issues, FCSD remains open to discussing the above terms of a passive Site visit.

This 28th day of December, 2021.

/s/ Jeffrey R. Daniel  
Jeffrey R. Daniel  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of FULTON COUNTY SCHOOL DISTRICT'S OBJECTIONS AND RESPONSES TO UNITED STATES OF AMERICA'S SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION TO NON-PARTY has been furnished via E-Mail only, on this 28th of December, 2021 to:

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